

Opinion No. 65-191

October 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. H. J. Torres, President, Board of Education, P.O. Box 158, Bernalillo, New Mexico

QUESTION

FACTS

The Bernalillo School System owns and operates its own school bus fleet of 23 buses. It does not have any private bus contractor in its employ.

QUESTION

If the seating space is available on a school-owned bus, is it permissible to allow parochial or private school children to ride this bus to the parochial or private school they attend when the county commission has indicated willingness to reimburse the public school system for the cost of transporting the parochial or private school children involved?

CONCLUSION

Yes, if there is no extension of the established route.

OPINION

{*311} ANALYSIS

The statutory provision here involved in Section 73-7-67, N.M.S.A., 1953 Compilation (P.S.) which reads in pertinent part as follows:

"The board of county commissioners of each county may contract with bus line operators, **from general funds of the county**, and not out of any funds or taxes raised or levied for educational purposes, or appropriated in aid of the state public schools, for transportation for pupils attending schools other than the state public schools, in compliance with the compulsory school attendance laws of the state, in the same manner **and over the same routes of travel** as is provided for the pupils attending the state public schools." (Emphasis added.)

This 1962 statute is not significantly different from a provision that was formerly incorporated in Section 73-7-36 by a 1951 amendment. The proviso then read as follows:

"Provided further, that each county may furnish transportation from general funds, and not out of any funds or taxes raised or levied for educational purposes or appropriated in aid of the state public schools, to supplement the present school bus transportation system for the aid and benefit of all pupils attending school in compliance with the compulsory school attendance laws of the state of New Mexico, upon the same terms and in the same manner **and over the same routes of travel** as is provided for pupils attending the state public schools." (Emphasis added.)

Immediately upon passage of this 1951 legislation there was an inquiry to this office concerning its constitutionality. This office held that because of the source of the moneys, i.e., county general funds, there was no violation of Section 3, Article 12 of the State constitution. Opinion No. 5339 (1951-1952). We also found no violation of the United States constitution in view of the decision in **Everson v. Board of Education**, 220 U.S. 1, and cases cited therein.

In Opinion No. 5495 (1951-1952) this office again stated that it found no violation of any constitutional provisions, but we did point out that the statute itself ^{*312} "precludes the extension of an established bus route to accommodate private school pupils, even if the county should provide for the additional cost occasioned thereby."

The phraseology of the 1962 statute being identical ("over the same routes of travel"), we are still of the opinion that transportation of this category of pupils must be over the regularly established routes. It cannot be extended to actually deliver these students to the non-public school. They must depart from the bus at a point on the established route which is nearest their particular school.

Since your school system has its own fleet of school buses, and thus does not have to contract for the transportation of students, it would seem that the county's contribution would be rather nominal -- this because while in a private contract the amount agreed upon might be based in part on the number of students transported, the only additional costs in your system would be for operation and maintenance.

It seems obvious that if the county can contract with a private party to transport students to a non-public school, it can also contract with the school system for the same service.